IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

CRL.A.No. 2146 of 2004()
SC.57/1999 of III ADDL.SESSIONS COURT, KOLLAM
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APPELLANT: COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

RESPONDENTS: ACCUSED:

BABU, S/O. VELAPPAN NAIR,
RUDRASHOM VEEDU, VADAKKEVAYAL,
KADAKKAL MURI, KADAKKAL VILLAGE.

BY ADV. SRI.SHABU SREEDHARAN
SRI.P.A.NOOR MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

CRL.A.NO.2146 OF 2004 ()

Dated this the 22nd day of November, 2007

J U D G M E N T

KOSHY,J.

This appeal is filed against the order of acquittal. Respondent was charge sheeted for murdering his own father–in–law.

2. According to the prosecution, due to previous enmity towards deceased Thankappan Pillai, father-in-law, who was raising objections in alienating the properties given to his daughter, the accused committed trespass upon the dwelling house of the deceased, Beena Bhavanam of Kadakkal Village on 18.8.1997 at 3.15 p.m. and he had scolded deceased Thankappan Pillai using obscene words and stamped him on the abdomen and chest using his right leg wearing shoe and also beat him with hand and using the iron chair taken from the hall room, thereby deceased sustained severe injuries on

several parts of his body. While undergoing treatment at Medical College Hospital, Thiruvananthapuram, the aforesaid Thankappan Pillai succumbed to the injuries. All the occurrence witnesses examined by the prosecution turned hostile. The witnesses examined by the prosecution included wife and daughter of the deceased and independent witnesses. The only other evidence relied on by the prosecution is the alleged dying declarations given by the deceased. They are Exts.P9 and P15. Ext.P9 is the F.I.statement and it was recorded by a Head constable. Ext.P15 is an earlier complaint addressed to the Sub Inspector of Police written on the same day. But the court noticed that the handwriting in Exts.P9 and P15 are one at the same and that also was written by the same person who recorded Ext.P9. It is pertinent to note that the Head Constable who recorded Ext.P4 was not examined as a witness. There was no explanation for the prosecution why Ext.P15 was not taken as the F.I.S. Court also noticed that name of the deceased was Thankappan Pillai and he has signed Ext.P15 as Thankappan Nair and Ext.P15 is alleged to have been written by deceased himself and not by the Head constable or any other person but Exts.P15 and P9 are in the same handwriting. In Ext.P9 it was recorded as statement of

deceased Thankappan Pillai but it was signed as Thankappan. Signature in Exts.P9 and P15 are different. In Exts.P9 and P15 it is stated that not only he was assaulted but his wife was also assaulted and his wife was examined as PW1 and she was declared hostile. She deposed that no such incident was caused. Trial Court after considering evidence was of the opinion that Exts.P9 and P15 dying declarations are manipulated and there is evidence to show that it was given by the deceased himself and not anybody are not invoking confidence in him. There is no evidence to show that he was capable of giving a statement. He died after 10 days. He did not make any such statement levelling allegations against the accused to any other person including the doctor.

3. Acceptance of dying declaration as truth is indicated in the maxim "*nemo moriturus praesumitur mentire*" i.e. A man will not meet his maker with a lie in his mouth. This principle was adopted under Section 32 of the Evidence Act. It is well settled that if the court is satisfied that the dying declaration is true and voluntary, it can be accepted as sufficient evidence to find the accused guilty without any further corroboration as held by the Apex court in ***State of U.P. v. Ram Sagar (AIR***

1985 SC 416). It was also held by the Apex court that since there is no opportunity for the accused to cross-examine the maker of the declaration, the court must scrutinize the dying declaration and before acting upon it must evaluate the same and satisfy that it is true and voluntary as held by the Apex court in ***K.Ramachandra Reddy v. Public Prosecutor (AIR 1976 SC 1994)***. If the dying declaration is suspicious, it should not be acted upon without corroboration as held by the Supreme Court in ***Rasheed Beg v. State of M.P. ((1974) 4 SCC 264)***. Here the trial court found that the dying declaration cannot be acted upon. Court after consideration of Exts.P9 and P15 found that dying declarations relied on by the prosecution are not acceptable and on the facts of this case we see no reason to differ from the findings arrived by the trial court in this regard.

4. In Ext.P7 post mortem certificate the cause of death is mentioned as 'rupture of oesiphageal varies'. PW7 doctor also deposed that the deceased was suffering from liver syrosis and mere blow can cause such injuries. A reading of the deposition of the doctor would show that cause of death need not be the result of an assault. The wife as well as the daughter of the

deceased also deposed that the deceased was a drunkard and due to syrosis, he used to vomit blood and even in the hospital he has demanded liquor while under treatment. He died only after 10 days of treatment. Taking into all these aspects, trial court found that prosecution was not able to prove the allegations in the charge sheet beyond reasonable doubt. It is settled law that the order of acquittal cannot be reversed by the appellate court unless there is patent illegality or findings are perverse. If trial court has taken a possible view on the basis of the evidence, order of acquittal cannot be interfered in an appeal proceedings ***(See Tota Singh and another v. State of Punjab ((1987) 2 SCC 529), Ramesh Babulal Doshi v. State of Gujarat (1996 (9) SCC 225 at page 229, State of Goa v. Sanjay Thakran and another (2007 (2) SCC (Crl) 162))***. In this case it cannot be stated that view taken by the trial court is not plausible. Hence we see no ground to interfere in the acquittal and this appeal is dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

CRL.A.NO.2146 OF 2004 ()

J U D G M E N T

22nd November, 2007